

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

PATRICK KELLETT, et al.,)
Plaintiffs,)
v.)
ACCURATE BACKFLOW SYSTEMS,)
LLC,)
Defendant.)
Case No. 4:10CV1747-SNLJ

MEMORANDUM IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT

INTRODUCTION

This is an action brought pursuant to the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. §1132, and the Labor Management Relations Act (“LMRA”), 29 U.S.C. §185, in which the plaintiffs Plumbers and Pipefitters Local 562 and the trustees of the Plumbers and Pipefitters employee benefit funds seek to collect delinquent fringe benefit contributions from defendant Accurate Backflow, LLC

The Complaint was served on defendant by special process server on September 26, 2010. To date, defendant has not filed an answer.

FACTS

Defendant Accurate Backflow Systems, LLC is party to collective bargaining agreements with Plumbers and Pipefitters Local 562 which requires the payment of contributions to the Plumbers and Pipefitters Pension and Welfare Educational Funds, and dues to Plumbers and Pipefitters Local 562. (Affidavit of Daniel Murphy, ¶¶4-5 and Exhibits 1 and 3 thereto). Defendant has failed to pay contributions for the months of April 2010 through October 2010. (Murphy Aff., ¶9). Defendant owes \$25,416.08 in contributions for the above period. In addition,

liquidated damages and interest are owed on these delinquent contributions. Defendant owes liquidated damages in the amount of \$1,120.00 and interest in the amount of \$1,817.26. (Murphy Aff., ¶¶10-11 and Exhibit 5 thereto). In addition, defendant failed to pay the required Union dues for the month of October 2010. Defendant owes Union dues in the amount of \$268.54 for these months. (Murphy Aff., ¶12 and Exhibit 6 thereto).

Plaintiffs have incurred attorneys' fees of \$443.00 and court costs of \$509.50. (Affidavit of Greg A. Campbell).

ARGUMENT

ERISA provides as follows at 29 U.S.C. §1132:

In any action under this subchapter by a fiduciary for or on behalf of a plan to enforce Section 1145 of this title in which a judgment in favor of the plan is awarded, the court shall award the plan -

- (A) the unpaid contributions,
- (B) interest on the unpaid contributions,
- (C) an amount equal to the greater of -
 - (i) interest on the unpaid contributions, or
 - (ii) liquidated damages provided for under the plan in an amount not in excess of 20 percent (or such higher percentage as may be permitted under Federal or State law) of the amount determined by the court under subparagraph (A),
- (D) reasonable attorney's fees and costs of the action, to be paid by the defendant, and
- (E) such other legal or equitable relief as the court deems appropriate.

For purposes of this paragraph, interest on unpaid contributions shall be determined by using the rate provided under the plan, or, if none, the rate prescribed under section 6621 of Title 26.

Thus, there can be no question the plaintiffs are entitled to recover all of the principal, Union dues, liquidated damages, interest, attorneys' fees and court costs they request.

CONCLUSION

For the foregoing reasons, plaintiffs are entitled to a default judgment against defendant Accurate Backflow Systems, LLC in the total amount of \$29,574.38, consisting of \$25,416.08 in delinquent fringe benefit contributions, \$1,120.00 in liquidated damages and \$1,817.26 in interest for the period of April 2010 through October 2010, \$268.54 in union dues for the month of October 2010, and \$952.50 in legal fees and costs.

Respectfully submitted,

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/s/ Greg A. Campbell
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing has been electronically filed with the Court on December 29, 2010 and a copy has been mailed to the following non-participant in e-filing: Accurate Backflow Systems, LLC, 3853 S. Broadway, St. Louis, MO 63118.

/s/ Greg A. Campbell